

SERVICE DATE – APRIL 19, 2006

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 153X)

UNION PACIFIC RAILROAD COMPANY–ABANDONMENT EXEMPTION–  
IN MONROE COUNTY, IA

Decided: April 18, 2006

On September 1, 2000, a decision and notice of interim trail use or abandonment (NITU) was served in this proceeding, authorizing a 180-day period for the Iowa Trails Council (Iowa Trails) to negotiate an interim trail use/rail banking agreement with the Union Pacific Railroad Company (UP) for a segment of rail line (the southern segment of the Oskaloosa Subdivision) extending between milepost 315.1 and milepost 322.9, in Monroe County, IA. The negotiating period under the NITU has been extended several times,<sup>1</sup> with the latest extension expiring on April 5, 2006.

By letter filed on March 29, 2006, Iowa Trails requests an extension of the negotiating period for an additional 180 days to complete negotiations for the acquisition of the right-of-way between mileposts 315.0 and 322.9. Iowa Trails states that negotiations are nearing completion and are expected to be finalized well within the 180-day time period requested. In a letter filed on April 4, 2006, UP states that it is willing to continue to negotiate with Iowa Trails and supports the request to extend the negotiating period.

On January 31, 2006, and again on March 24, 2006, the Monroe County Board of Supervisors (Monroe County or the County) filed letters opposing any further extensions. In addition, the County seeks clarification of the time limits on trail negotiations. Monroe County expresses concern that the line has become an attractive nuisance that would be a safety hazard. The County also argues that the line should not be rail banked for future rail use, because there is no need for another connection in the area. Monroe County maintains that the interim trail use process has delayed putting this property back into production. The County asserts that there is little or no local support for creation of a trail. Finally, the County requests that Iowa Trails produce its plan for financing the development, undertaking maintenance, paying taxes, constructing fencing and controlling noxious weeds.

Iowa Trails filed a letter in response to Monroe County on April 18, 2006.

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<sup>1</sup> A Board decision served on February 26, 2001, amended the NITU to the extent necessary to implement interim trail use/rail banking for that portion of the right-of-way between milepost 315.0 and milepost 315.1, thereby authorizing the parties to negotiate an agreement for trail use between milepost 315.0 and milepost 322.9.

Under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), this agency must “preserve established railroad rights-of-way for future reactivation of rail service” (rail banking) by prohibiting abandonment where a trail sponsor offers to undertake the management of, pay the taxes on, and assume legal liability for the right-of-way for use in the interim as a trail. See 16 U.S.C. 1247(d); Georgia Great Southern Division, South Carolina Central Railroad Co., Inc.—Abandonment and Discontinuance Exemption—Between Albany and Dawson, in Terrell, Lee, and Dougherty Counties, GA, Docket No. AB-389 (Sub-No. 1X) (STB served May 16, 2003) (Georgia Great Southern); Citizens Against Rails-to-Trails v. STB, 267 F.3d 1144, 1149-50 (D.C. Cir. 2001) (CART). Congress clearly intended to preserve as many rail corridors as possible under section 1247(d). See Preseault v. ICC, 494 U.S. 1, 19 (1989).

The Board’s role under the Trails Act is ministerial. This agency does not decide whether interim trail use is desirable for a particular line. The Board’s discretion is limited to confirming that the statute has been properly invoked and that the statutory requirements regarding rail banking and the trail user’s assumption of financial and managerial responsibility are met. See, e.g., Iowa Southern R. Co.—Exemption—Abandonment, 5 I.C.C.2d 496, 503 (1989), aff’d, Goos v. ICC, 911 F.2d 1283 (8th Cir. 1990); CART. The Board plays no part in the parties’ negotiations. Chelsea Property Owners—Abandonment—Portion of the Consolidated Rail Corporation’s West 30th Street Secondary Track in New York, NY, Docket No. AB-167 (Sub-No. 1094)A (STB served June 13, 2005). Nor does the Board analyze, approve, set the terms of—or even require that parties submit to the agency—their trail use agreements. Georgia Great Southern, slip op. at 6.

Monroe County’s reasons for opposing a further extension of the NITU negotiating period are inconsistent with the Board’s limited role and lack of discretion under the Trails Act. Moreover, it is well settled that, as long as the railroad has not consummated the abandonment of the line and evidences a continued willingness to negotiate a trail agreement, the Board may extend the NITU negotiating period in the interest of promoting interim trail use and rail banking. Under the circumstances, a further extension of the negotiating period is warranted. See Birt v. STB, 90 F.3d 580, 588-90 (D.C. Cir. 1996); Grantwood Village v. Missouri Pac. R.R. Co., 95 F.3d 654, 659 (8th Cir. 1996). Accordingly, the NITU negotiating period will be extended to October 2, 2006.

Monroe County’s concerns related to potential safety and nuisance issues are properly addressed by the laws of the state and local governments where the trail is located. See Rail Abandonments—Use of Rights-of-Way as Trails—Supplemental Trails Act Procedures, Ex Parte No. 274 (Sub-No. 13) (ICC served May 26, 1989). The Trails Act does not preclude states and localities from the exercise of their police power. As the Board has frequently stated, interim trail use generally must comply with State and local ordinances and public health and safety legislation. Nothing in the Board’s Trails Act rules or procedures is intended to usurp the right of state, regional, and local entities to impose safety and other appropriate regulations on

recreational trails. The trail user also is obligated to ensure that the right-of-way does not become a public nuisance. Kansas Southwestern Railway, L.L.C.—Abandonment—In Sumner, Harper, Barber, Reno and Kingman Counties, KS, STB Docket No. AB-437 (Sub-No. 1) (STB served June 10, 1999); Idaho Northern & Pacific Railroad Company—Abandonment and Discontinuance Exemption—In Washington and Adams Counties, ID, Docket No. AB-433 (Sub-No. 2X), et al., (STB served Apr. 1, 1998). But those obligations are enforced by state or local governments, not the Board.

The County has not justified its request that this agency require Iowa Trails to produce its plan for financing, maintaining, and paying taxes for this trail. See Jost v. Surface Transp. Bd., 194 F.3d 79, 89-90 (D.C. Cir. 1999). The trail proponent is required merely to state its willingness to assume responsibility for managing the right-of-way, for any legal liability arising out of the use of the right-of-way, and for the payment of all taxes. The proponent need not, under the Trails Act or the Board's implementing regulations, submit a plan to carry out those obligations. Id. Monroe County has failed to make any showing as to why Iowa Trails would be unable to carry out its obligations. And its concerns related to local support for a trail and the lack of a current need for rail service on this line ignore the fact that the statute gives the railroad (or another approved service provider) the right to restore rail service on all or part of a rail banked line at any time. For all of these reasons, the extension request will be granted.

Finally, Iowa Trails states in its April 18, 2006 letter that the Iowa Department of Transportation (Iowa DOT) has taken an interest in the acquisition of this property for conversion to a trail and expects to take title for the State and to assume full responsibility for the right-of-way. If Iowa DOT desires to replace Iowa Trails as the trail user in this proceeding, it must first comply with the Board's requirements at 49 CFR 1152.29 by: (1) submitting a statement of willingness to assume financial responsibility for interim trail use and rail banking, and (2) acknowledging that the use of the right-of-way as a trail is subject to possible future reconstruction and reactivation of the right-of-way for rail service.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The request to extend the interim trail use negotiating period is granted.
2. The negotiating period under the NITU is extended to October 2, 2006.

3. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams  
Secretary